

### **REMARKS**

Reconsideration and allowance of the subject application are respectfully requested. Claims 1-33 remain pending, with claims 1, 3, 5, 7, 12, and 17 being independent claims.

#### **Allowable Subject Matter**

Applicant appreciates the Examiner's indication that claims 22-32 would be allowable if rewritten in independent form including limitations of their respective base claim and any intervening claims. For at least reasons set forth below, Applicant respectfully submits that all pending claims should be indicated as allowable.

#### **Prior Art Rejections**

1. **Segawa - Masayuki**

Claims 1-8, 12-13, and 17-18 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over JP 09-172553A to *Segawa* in view of JP 08-221546 to *Masayuki*. This rejection is respectfully traversed.

Independent claim 1 is directed to an image processing method. The image processing method of claim 1 comprises the steps of: receiving selection of a target image having a desired color-tone from a plurality of reference images, each including the same type of image, each having a different color-tone; receiving specification of an area in an image displayed; and changing a color-tone of a desired area including the specified area to the color-tone of the target image.

Independent claim 7 is directed to an image processing method that comprises the steps of: receiving selection of a target image having a desired color-tone from a plurality of reference images, each including an image of the same subject, each having a different color-tone; receiving specification of an area in a displayed image including an image of the same kind of subject as the subject in the target image; and changing a color-tone of a desired area including the specified area to the color-tone of the target image.

In maintaining the rejection of these independent claims, the Examiner asserts that *Segawa* discloses an image processing method in which color-tone conversion is performed

based on a target image having a desired color-tone selected from a plurality of reference images that include the same type of image, referring to the Abstract and paragraphs [0007]-[0009]. Office Action, page 3. In response to arguments presented in the Amendment dated May 19, 2005, the Examiner asserts on page 2 of the Office Action that:

Applicant's arguments with respect to claims 1-21 have been fully considered but are moot in view of the new ground(s) of rejection. The Examiner likes to point out that the *Segawa* still read on the limitation of "the type of" image, even through a new ground, because the reference images described in *Segawa* are all same type of images that include different tones and colors.

Although *Segawa* performs color image processing based on a reference image from a "storage means" that stores a plurality of reference images, Applicant fails to find a teaching from the cited portions of *Segawa*, or the remainder of the reference, specifying that the reference images each include the same type of image (as recited in claim 1), e.g., images of people's faces, or the same subject (as recited in independent claim 7). The cited portions of *Segawa* do not support the Examiner's conclusion that these features are taught in the reference.

The rejection relies on *Masayuki* as allegedly teaching "selecting an area of an image and then [matching] the color tone of the area with a desired tone." Office Action, page 3. The Examiner's reliance on *Masayuki*, however, fails to make up for the above-noted deficiency of *Segawa*.

To establish *prima facie* obviousness, all claim limitations must be taught or suggested by the prior art and the asserted modification or combination of prior art must be supported by some teaching, suggestion, or motivation in the applied reference or in knowledge generally available to one skilled in the art. *In re Fine*, 837, F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Thus, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). The prior art must suggest the desirability of the modification in order to establish a *prima facie* case of obviousness. *In re Brouwer*, 77 F.3d 422, 425, 37 USPQ2d 1663, 1666 (Fed. Cir. 1995). It can also be said that the prior art must collectively suggest or point to the claimed invention to support a finding of obviousness. *In re*

*Hedges*, 783 F.2d 1038, 1041, 228 USPQ 685, 687 (Fed. Cir. 1986); *In re Ehrreich*, 590 F.2d 902, 908-09, 200 USPQ 504, 510 (CCPA 1979).

In view of the above, Applicant respectfully submits that the asserted combination of *Segawa* and *Masayuki* (assuming these references may be combined, which Applicant does not admit) fails to establish *prima facie* obviousness of independent claim 1 or independent claim 7, or any claim depending therefrom.

Furthermore, Applicant respectfully submits that claims 3, 5, 12, and 17, and their respective dependent claims, define over the asserted combination at least based on similar reasoning to that set forth above.

At least in view of the above, Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejection under 35 U.S.C. § 103 based on the asserted combination of *Segawa* and *Masayuki*.

2. ***Segawa - Masayuki - Nakamura - Yoshimura***

Claims 9-11, 14-16, and 19-21 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over *Segawa* in view of *Masayuki*, and further in view of U.S. Patent 5,461,457 to *Nakamura* and U.S. Patent 6,463,172 to *Yoshimura*. This rejection is respectfully traversed.

As set forth on page 4 of the Office Action, the Examiner relies on the additional secondary references, *Nakamura* and *Yoshimura*, as allegedly teaching incremental features of the above-listed dependent claims.

Initially, Applicant notes that the Examiner's reliance on *Nakamura* and *Yoshimura* fails to make up for the deficiencies of the base *Segawa*, *Masayuki* combination discussed above. Therefore, the asserted combination of references (assuming these references may be combined, which Applicant does not admit) fails to establish *prima facie* obviousness of any of the pending claims.

Furthermore, in an embodiment of the present invention, the vertical axis of the histogram represents cumulative values of the number of pixels, and the values on the vertical axis monotonically increase from the origin of the histogram, as illustrated in Fig. 6. In contrast, in *Nakamura*, the vertical axis of the histogram does not represent cumulative values of the

number of pixels but the number of pixels for each value of hue or saturation, as illustrated in Figs. 4A and 4C. Further, in *Yoshimura*, the vertical axis of the histogram does not represent cumulative values of the number of pixels but the number of pixels for each pixel value, as illustrated in Figs. 2A through 2C. Therefore, *Nakamura* and *Yoshimura* fail to teach or suggest the use of a cumulative histogram of the type described above.

In view of the above, Applicant respectfully requests reconsideration and withdrawal of the Examiner's prior art rejection based on the asserted combination of *Segawa*, *Masayuki*, *Nakamura*, and *Yoshimura*.

### Conclusion

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Pursuant to the provisions of 37 C.F.R. § 1.17 and § 1.136(a), Applicant hereby petitions for an extension of one (1) month in which to file a response to the outstanding Office Action. The required fee of \$120.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By

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